REMARKS

Reconsideration is respectfully requested.

Entry of the above amendments is courteously requested in order to place all claims in this application in allowable condition and/or to place the non-allowed claims in better condition for consideration on appeal.

Claim 17 remains in this application. Claims 1 through 16 have been cancelled. No claims have been withdrawn or added.

The Examiner's rejections will be considered in the order of their occurrence in the Office Action.

Paragraph 3 of the Office Action

Claim 13 has been objected to for the informalities noted in the Office Action.

Claim 13 has been cancelled, and therefore the objection to claim 13 is submitted to be moot. However, claim 17, which includes similar language to claim 13, has been changed to read more smoothly.

Paragraphs 4 through 7 and 9 through 22 of the Office Action

Claims 9 through 10 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Donnelly et al. (U.S. 6,192,346).

Claims 2 through 7 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Donnelly et al (U.S. 6,192,346) and "Visual Rota from CDT" (www.btinternet.com/vrota).

Claim 11 has been rejected under 35 U.S.C. Section 103(a) as being unpatentable over "Visual Rota from CDT" (www.btinternet.com/vrota).

Claims 2 through 7 and 9 through 11 have been cancelled, and therefore the §103(a) rejections of these claims are submitted to be moot.

Paragraphs 8 and 23 of the Office Action

Claims 11 through 17 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over "Visual Rota from CDT" www.btinternet.com/vrota) in view of Donnelly et al (U.S. 6,192,346).

Claims 11 through 16 have been cancelled.

Claim 17 has been amended to include the requirements of independent claim 11, from which it previously depended, so that claim 17 is now in independent form with no new limitations. Claim 17 requires, in part,

The claimed invention generally relates to a system of permitting employees to trade shifts among themselves once a schedule has been established by an employer of the employees. The trading of shifts among employees is subject to a number of conditions including acceptance by a second employing having a shift to trade, and verifying that the second employee is qualified to perform the job of the employee seeking the trade of the shift, and that a minimum period of time before the shift to be traded remains.

The Visual-Rota reference generally relates to a system that permits swapping of shifts (or days off) between employees in a schedule. No distinction is made between jobs or skills in the disclosure of Visual-Rota, and thus the disclosed system is incapable of determining qualifications.

The Donnelly reference teaches a system for creating a working schedule that does not provide for any employee changes to the schedule once it has been established, and therefore the disclosure leaves one at a loss as to what restrictions and permissions might be applied to any such employee interference with the system.

Claim 17 requires in part "checking training data associated with the second employee in a training data database, and comparing the training

data associated with the second employee with training requirements associated with a work area function to be performed on the first shift to verify that the second employee is qualified to perform the work area functions associated with the first shift". This requirements of the claimed invention is particularly important to those industries and companies where the jobs of the employees are highly diverse, or the ability of one employee to perform another employee's work is highly limited or even regulated such as by, for example, a union contract setting forth job training and qualification requirements for each job.

It is contended in the Office Action that the combination of Visual-Rota and Donnelly suggests to one of ordinary skill in the art "to check training data of the worker". However, Visual-Rota does not distinguish between types of jobs or qualifications to perform different types of jobs, instead the shifts and the employees are treated as being fungible or equally interchangeable.

Further, nothing in Visual-Rota states or suggests "the importance of making sure employees work their assigned shifts", especially when one considers that the cited paragraphs 1 through 3 of page 3 of Visual-Rota deal solely with the ability of employees to swap their "assigned" shifts for shifts that have been assigned to other employees. This teaching is completely opposite of the assertion in the Office Action that Visual-Rota teaches "the importance of making sure employees work <u>their assigned</u> shifts". Further, the Office Action asserts that the Visual-Rota reference teaches "the importance of making sure employees... properly trade shifts based on the rules to reduce problems with the schedule". However, this contention still does not change the fact that Visual-Rota clearly sets forth that there are two rules "to obey" (while not disclosing any other "rules")--namely that a shift must be traded for a shift and that a day off must be traded for a day off. Clearly, these rules do not have any connection to the

particular qualifications of another employee to work the offering employee's job and thus be qualified to trade.

Claim 17 also requires "checking a length of time between a time of receipt of the conditional acceptance and a time of occurrence of the first shift and the second shift against a minimum time period for trading shifts to verify that the length of time is not less than the minimum time period". As outlines in the disclosure, this requirement assures that the employees are not attempting to make changes in their schedule at a time that its too close to the time of the shift. The minimum time period can be established by the employer based upon, for example, the feasibility of verifying the criteria set by the employer before the shift occurs, or may implement part of a negotiated labor contract between the employer and the labor union representing the employees.

The Office Action alleges that "it is old and well known that places of employment require that employees give notice by a specific deadline in order to do things such as take leave, quit, swap shifts, etc." ,

This contention seeks to equate each of these listed events as necessarily requiring

Rather than requiring that certain events have advance notice, the Visual-Rota reference suggests to one of ordinary skill in the art that events such as sickness and "leaving" can be predicted "statistically" and thus compensated for. See page 3, section 3 of the Visual-Rota reference, where it states (emphasis added:

> As long as everyone works to these shifts, then there are no problems, however, human nature and health do need to be handled correctly. Sickness is one problem that tends to be statistically cyclical, staff leaving is also predictable. These and many other variables can be factored into the statistics.

Thus, it is submitted that the Visual-Rota reference teaches one of ordinary skill in the art that shift altering events can be predicted rather than suggesting to one of ordinary skill in the art that shift altering events must be arranged more than a minimum period of time before the shift change is to occur.

In fact, the Visual-Rota reference tends to downplay any limitations on the ability of the employees to trade shifts, as is evidenced on page 3, section 1 of the Visual-Rota reference that states (emphasis added):

> However, this means that the first person is working one shift less and the second person is working one day more. So, they need to find another day, where the second person has a shift and the first person has a day off, and swap. Then the system is balanced and everyone is working the right number of shifts. With Visual-Rota, this swap can be any time, it doesn't have to be in the same week or even month, it can be in 3 months time.

Thus, the emphasis that one of ordinary skill in the art takes from the Visual-Rota teaching is that there is little restriction on the swapping of shifts, and that balancing is the primary restriction on any swap.

The Office Action further alleges that "in order for an employee to withdraw from employment with a business, he or she must give notice a specific length of time before quitting so that the business can find someone to fill said employee's responsibilities before said employee leaves". The example given in the Office Action is not applicable here for at least three significant reasons. Firstly, the invention (and the cited references) do not deal in any sense with an employee leaving his or her employment, in which case a permanent replacement must be found not for only one shift but *all* shifts of that employee and which one can appreciate is a much more time consuming task requiring a significantly longer amount of lead time than merely changing shifts. Secondly, and perhaps more significantly, the "specific length of time" that is referred to in the Office Action to bolster the argument does not exist--an employee can quit his or her job at any time

without having to stay on for any period of time after the giving of notice. One may give advance notice (of, for example, two weeks) to the employer prior to leaving as a courtesy to the employer and/or stay on good terms with the employer for future job references, but that is certainly not required of the employee to leave his or her job, or one could be subject to involuntary servitude. In other words, one can simply leave his or her job today and not be legally bound or legally liable to the employer because prior notice was not given. Thirdly, as noted above, the Visual-Rota reference clearly suggests to one of ordinary skill in the art that "staff leaving" can be predicted, and thus tends to decrease the impact of having prior notice of the quitting of an employee.

The above distinction is significant in that claim 17 *requires* "a minimum time period" before the proposed shift trade before confirming the shift trade, and rejecting the shift trade if the criteria is not met.

The Office Action further contends that "[I]t would have been obvious... to require a specific length of time between the shift swap and the shift in order to increase the efficiency of the schedule and the timeliness of the company by making sure that all areas involved are appropriately staffed". However, nothing in the references suggests that a shift swap performed a "specific length of time" before the shift increases the "efficiency" or "timeliness" of the system, and nothing in the Office Action explains how efficiency is increased by increasing the notice. While this aspect of the claimed invention derives benefits from implementing negotiated agreements and providing time to check or verify training criteria, it is significant that neither of these benefits (or any benefits at all) are mentioned in the cited references for increasing the amount of time prior to the shift required to make the shift swap.

Further, claim 17 requires "restricting access to information about the trade of the first shift for the second shift upon confirmation of the trade".

This requirement of claim 17 makes sure that others not participating in the shift trade are not made privy to any and all of the trades that are being made, which is generally desirable for employee privacy but may also be required by a union contract dealing with such matters.

Although it is alleged in the Office Action that this required feature flows from the teaching of the Visual-Rota and Donnelly references, not one portion of either reference is cited in support of such a claim. These references cannot teach or suggest what is not eve alluded to in their disclosures, and therefore it is submitted that the prior art would not lead one of ordinary skill in the art to this requirement of claim 17.

It is therefore submitted that the prior art, and especially the allegedly obvious combination of Visual-Rota and Donnelly et al. set forth in the rejection of the Office Action, would not lead one skilled in the art to the applicant's invention as required by claim 17.

Withdrawal of the §103(a) rejection of claim 17 is therefore respectfully requested.

CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

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By _____ **Date:** 9/22/03

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